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Needed Balance for Tomorrow's Climate Change Litigation Forum

1 message

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Thu, May 2, 2019 at 3:19 PM

Dear Dean Antolini,

I became aware today of a symposium being held tomorrow that is sponsored by the University of Hawai'i William S. Richardson School of Law for which you are listed as the host and moderator. The topic of this five-hour long event is climate change litigation, including lawsuits filed against America's energy manufacturers. More than ten individuals are listed as speakers or panelists, and all of them appear to support this novel litigation. It has been my experience that when law schools host events on controversial topics, such as this one, care is taken to make sure that students and others in the audience are presented with multiple points of view.

As you know doubt know, the idea of suing America's energy industry for climate change-related conduct and harms has been rejected in multiple cases, including by the highest court in the land. In 2011, the Supreme Court dismissed *Am. Elec. Power v. Connecticut*, 564 U.S. 410 (2011), issuing a broad warning against climate change tort suits, including those filed by states and localities. The Court explained that there is "no room for a parallel track" of tort litigation over climate change public policy and that setting climate change public policies were solely "within national legislative power." Further, the Ninth Circuit, as well as federal judges in California and New York, have similarly refused to create the type of category liability over fossil fuels sought in such cases. They each have dismissed cases seeking money from energy companies for so-called climate change-related injuries. Students and others attending this symposium should be educated about this case law.

In addition, the audience members should hear from individuals who disagree that suing the companies that manufacture the energy products that we all use to heat our homes, drive our cars and power our businesses is an appropriate public policy solution to global climate change. To the contrary, such lawsuits are highly political and counter-productive. There is no tort wrong here that needs to be remedied, but there is a need for an earnest public policy debate over the best way to reduce climate change emissions and impacts. Rather than meritless litigation, America's cities should work with manufacturers in America on innovative ways to achieve these goals. Innovation has always been the way our country has brought about the type of societal-wide advancements needed here.

As you may know, the National Association of Manufacturers set up a program in 2017 called the Manufacturers' Accountability Project specifically to engage in these types of forums. Earlier this year, I was retained as special counsel to this project. We would be pleased to work with you to try to bring needed balance to your program. Given the short notice of the event, we ask that you postpone the panel discussion scheduled for after the elected representatives' presentations until you can include panelists who can represent each side of this issue. We hope that you will agree that law schools should provide educational forums that provide balanced debates of legal issues. When one side of the debate has been so discredited, as here, not providing this balance does students and the general public a significant disservice.

Please let me know if we could assist you in the effort to provide this needed balance.

With much appreciation,

Phil Goldberg*Partner*

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Mail Gate made the following annotations on Thu May 02 2019 17:20:06

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